

REMARKS

Applicants wish to thank the Examiner for considering the present application. In the previously submitted Appeal, claims 1-19 were present in the application. Claims 20-40 have been added to the present application. Claims 1, 6, 8, 13, 14 and 19 have been amended.

In the Decision by the Board, claims 1-3, 5-10, 12-16, 18 and 19 were affirmed in view of Zigmond. Claims 4, 11 and 17 were newly rejected under Section 103 in view of Zigmond and Appellants' admitted prior art.

The independent claims have been changed to highlight the differences pointed out by the Board.

The Board states on page 7 of their decision, "Claim 1 requires neither the constant attention of the viewer, nor the physical presence of the subscriber. Claim 1 recites a sensor that provides a message indicative that the subscriber is using the programming. Zigmond clearly provides for methods that allow for identity of the viewer to be determined. (Finding of Fact 5). Such login processes would have to constitute "use" of the system and use of displayed programming. While we acknowledge that Appellants' specification, particularly paragraph [0058], recites specific methods, such as using an IR receiver, to determine the presence of a viewer, claim 1 is broader than the specific disclosure in the Specification. As such, we do not find that the Examiner erred in rejecting claim 1 as being anticipated by Zigmond."

Accordingly, Applicants have amended claim 1 to recite, "A sensor generating a viewer presence message indicative of the viewer presence near the communication apparatus." Claim 14 was also amended in a similar way. Claim 8 is a method claim and was amended to recite, "Generating a viewer presence message indicative of a viewer presence near the communication apparatus."

Because the Board states that these teachings are not present in the Zigmond reference, Applicants have amended the claims to recite these elements. Therefore, Applicants respectfully request the Examiner to allow the claims in present form.


CONCLUSION

In light of the remarks above, Applicants submit that all rejections are now overcome. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

Should any fees be associated with this submission, please charge Deposit Account 50-0383.

Respectfully submitted,

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